

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of

Revision of the Commission's Rules To
Ensure Compatibility with Enhanced 911
Emergency Calling Systems

CC Docket No. 94-102

Joint Petition for Suspension or Waiver of the
Location-Capable Handset Penetration
Deadline

CC Docket No. 05-288

**ACS Wireless, Inc. Comments in Support of CTIA/RCA Petition to Suspend Deadline for
Location-Capable Handset Penetration or, Alternatively, for Waiver of 95% Penetration
Requirement**

I. Introduction.

ACS Wireless, Inc. ("ACSW") submits these comments in support of the Joint Petition filed by CTIA – The Wireless Association™ and the Rural Cellular Association (collectively "CTIA/RCA").¹ ACSW supports the CTIA/RCA Petition to suspend the Commission's December 31, 2005 deadline for 95% penetration of location-capable handsets² or, alternatively, to provide a framework for individual requests for waiver of the 95% penetration rule. ACSW agrees with CTIA/RCA that when carriers have made a good faith effort to deploy location-capable handsets, but their customers simply choose to retain their old handsets longer than anticipated, the Commission should suspend or waive the 95% penetration deadline until carriers can achieve that goal over a longer, more customer-directed time frame. In this way, carriers

¹ Joint Petition For Suspension or Waiver of the Location-Capable Handset Penetration Deadline, *In the Matter of Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Joint Petition for Suspension or Waiver of the Location-Capable Handset Penetration Deadline*, CC Docket No. 94-102 (June 30, 2005) ("CTIA/RCA Petition").

² See 47 C.F.R. 20.18(g)(1)(v). CTIA/RCA asks the FCC to suspend, for all carriers that met the 100% activation deadline, its December 31, 2005 95% penetration deadline for location-capable handsets until carriers meet the 95% penetration benchmark through customers' voluntary handset replacement and churn. See CTIA/RCA Petition at 1.

will still make all possible efforts to achieve the 95% goal, while customers retain the ability to make handset decisions that suit their own service and economic preferences.

ACSW has experienced slower-than-anticipated handset replacements in its Alaska service area, despite strong efforts to encourage customers to switch to location-capable handsets. The CTIA/RCA petition could be interpreted to apply only to carriers subject to the December 31, 2005 deadline and not to carriers that are operating under modestly extended deadlines due to other circumstances. Therefore, ACSW asks that, if the Commission grants the CTIA/RCA petition, it apply relief more generally to include these carriers as well. Specifically, to achieve the petition's goals more fully, ACSW requests that the Commission make any new opportunity for relief from the 95% penetration deadline available to all carriers that show good faith compliance with the Commission's Enhanced 911 ("E911") rules, regardless of individual deadlines for the penetration benchmark.

II. Background.

ACSW, a Tier III wireless carrier, has one of the most advanced and extensive digital networks in Alaska. ACSW provides wireless service to more than 100,000 subscribers across Alaska through its own network facilities. ACSW is currently constructing a CDMA network throughout the state that will include one hundred seventy-five (175) cell sites and two (2) switches. ACSW provides E911 Phase II service on its CDMA network using location-capable A-GPS handsets.

ACSW, like many carriers, is making significant progress toward meeting its E911 obligations and has fulfilled all PSAP requests for Phase I and Phase II E911 service.³ Because ACSW was in the process of upgrading to an all-CDMA network, had no pending PSAP requests in non-CDMA areas, and faced unique challenges in some of the small remote communities in its

³ Only the Anchorage PSAP has requested Phase II service.

predominantly rural service area, the FCC extended ACSW's Phase II E911 deadlines.⁴ Under these extended deadlines, ACSW must ensure that all new handsets activated are location-capable by December 31, 2005 and must achieve 95% penetration of location-capable handsets by June 30, 2006 for Anchorage and Fairbanks customers; and by January 31, 2007 for all other customers.⁵ ACSW has made substantial progress toward meeting these deadlines: as of September 30, 2005, 50.8% of ACSW's subscribers statewide, and 52.3% of ACSW's Anchorage subscribers, had location-capable handsets.

III. Despite ACSW's New Service and ALI-Capable Handsets Offerings, Many of Its Subscribers Prefer to Keep Their Old Handsets.

CTIA/RCA maintains that, even though most carriers have been "diligent in meeting the Commission's benchmarks," customers' decisions to retain their existing handsets have made it difficult for carriers to meet the Commission's December 31, 2005 deadline for 95% penetration of ALI-capable phones in their customer base.⁶ ACSW has experienced the same customer behavior in its serving area. Despite ACSW's efforts to make location-capable handsets available to its customers, customers are not switching over to new CDMA phones as quickly as the FCC anticipated when it set the deadline.⁷

Customers are moving to location-capable handsets more slowly than expected for several reasons. Some customers appear fully satisfied with their existing handsets. According to sales and marketing data, these customers prefer to avoid learning how to use a new phone, transferring contacts, and recreating speed dial lists.⁸ Additionally, many customers do not want

⁴ See *Order, In the Matter of Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, E911 Phase II Compliance Deadlines for Tier III Carriers*, CC Docket No. 94-102 (Apr. 1, 2005) ("Waiver Order") at ¶¶ 15-21.

⁵ See *id.* at ¶¶ 20-21.

⁶ See CTIA/RCA Petition at 6.

⁷ The FCC "relied on existence of churn rates of almost 25 percent per year to establish its handset penetration deadline." *Id.* at 12.

⁸ See *id.*

to incur the expense of purchasing accessories for a new handset.⁹ Also, as CTIA/RCA describes, some “peace of mind” customers, who make only a few calls per month prefer not to learn a new handset solely because it has ALI-capabilities.¹⁰

Second, some customers do not see a sufficient benefit to replace their old phones because, in certain locations, local PSAPs do not support E911 Phase II service. Although the Commission expected ALI-capable handset deployment to encourage PSAPs to implement Phase II technology,¹¹ far fewer PSAPs than expected have installed new equipment.¹² CTIA/RCA notes that many PSAPs are underfunded and have not yet upgraded their facilities to handle location data from wireless calls.¹³ This is especially true in Alaska, where only one PSAP in the entire state can receive Phase II data.¹⁴

Third, the geography and demographics of Alaska make new handset changes logistically challenging in many parts of the state. As studies indicate, customers in rural areas are substantially more reluctant to upgrade their handsets.¹⁵ ACSW has experienced this response from its customers. Many ACSW customers are not only rural, but live in small communities in remote and isolated locations that are not even accessible by road. While ACSW has retail outlets and sales points in most major Alaskan communities, it has no direct customer outlets in many small communities. In a number of locations, including Seldovia in Southcentral Alaska and Klawock, Craig, and Hoonah in Southeast Alaska, customers must travel by boat or plane to a community where handsets are sold. Consequently, many customers must spend considerable

⁹ *See id.*

¹⁰ *See id.* at 2.

¹¹ *See Third Report and Order, In the Matter of Revision of the Commission’s Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, CC Docket No. 94-102 (1999) at ¶ 44.

¹² *See* CTIA/RCA Petition at 5.

¹³ *See id.*

¹⁴ ACSW is not aware of any other Alaska PSAPs that have Phase II-capable equipment.

¹⁵ *See, e.g., Alltel Corporation Petition for Limited Waiver, In the Matter of Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Alltel Corporation Petition for Limited Waiver of Section 20.18(g)(1)(v) of the Commission’s Rules*, CC Docket No. 94-102 (Sep. 30, 2005) at 8-9.

time and money to travel to larger towns to upgrade to new handsets. Understandably, this is a disincentive for customers to upgrade handsets.

While ACSW has developed innovative means to reach its rural customers, it is still experiencing customer resistance to new location-capable phones. ACSW has developed plans to bring handsets directly to customers through temporary, traveling stores to encourage more of its customer base to upgrade to location-capable handsets. For example, ACSW brought sales representatives and its handset inventory to Sitka for several days. Although ACSW promoted this “customer appreciation” trip heavily through advertising and customer appreciation public relations, only 17 of the 305 TDMA customers in Sitka (roughly 5%), chose to upgrade their phones during the several days its representatives offered phones in the community. ACSW plans to encourage handset upgrades at other service locations in this manner.¹⁶ However, even with this extraordinary effort, ACSW cannot guarantee that its customers will actually purchase new handsets.

IV. The Commission Should Provide Relief from the 95% Penetration Requirement to All Carriers That Have Acted in Good Faith.

CTIA/RCA asserts that carriers that have made a good faith effort to “work conscientiously” to implement Phase II solutions should not be forced to penalize consumers who choose to keep older non-ALI-capable handsets.¹⁷ Therefore, CTIA/RCA asks the Commission to suspend the 95% handset penetration deadline contained in section 20.18(g)(1)(v) of the Commission’s rules.¹⁸ Specifically, CTIA/RCA proposes that carriers that met the 100% new digital handset activation deadline be entitled to a general suspension of the

¹⁶ ACSW’s ALI-capable handsets are also available for purchase via its website and through phone orders. However, some remote ACSW customers do not have Internet access.

¹⁷ *Id.* at 8.

¹⁸ *See id.* at 1-2.

December 31, 2005 deadline.¹⁹ Alternatively, CTIA/RCA requests that the Commission adopt a standard for waiving the December 31, 2005 penetration rate deadline for good cause shown.²⁰

For waiver guidance, CTIA/RCA suggests that the FCC implement a three-part framework:

“(1) the carrier would have to make an initial “threshold” showing that it has made a good-faith effort to comply with the Commission’s E911 Phase II interim deployment requirements and other FCC E911 implementation rules; (2) the carriers would have to demonstrate that it has satisfied at least one of several established factors that would justify grant of the waiver; and (3) a carrier meeting the first two criteria would be granted additional time to achieve the 95 percent penetration benchmark, with the amount of time allowed depending on the individual carrier’s circumstances.”²¹

Among other factors, CTIA/RCA suggests that carriers be required to show that 100% of all new digital handsets activated are ALI-capable.²² Carriers would also have to demonstrate progress toward meeting PSAP Phase II requests, as evidenced by pending PSAP deployment request logs.²³

ACSW agrees with CTIA/RCA that wireless customers who choose to retain non-location capable handsets should not be forced to buy new handsets. Whether the customer only occasionally uses a wireless phone, does not wish to purchase new accessories, does not want to reenter data into a new phone, or simply wants to wait until the local PSAP is actually capable of receiving location data, the customer should not be punished. Likewise, wireless carriers should not be penalized for the slower-than-expected rate at which customers are upgrading to ALI-capable phones. As CTIA/RCA notes, the competitive wireless industry has focused on improving customer satisfaction.²⁴ Lower customer and handset churn indicates that carriers are succeeding in this goal as customers are the recipients of better services and longer-term handset

¹⁹ *See id.*

²⁰ *See id.*

²¹ *See id.* at 10-11.

²² *See id.*

²³ *See id.*

²⁴ *See id.* at 5.

use. Consequently, carriers that have been working for several years to obtain and market ALI-compatible phones and E911 Phase II solutions while also providing higher quality products and services should not be penalized for circumstances beyond their control – the choice by some consumers to remain loyal to a particular handset.

ACSW also agrees with CTIA/RCA that only carriers that have made good faith attempts to comply with the 95% penetration rate requirement should be eligible for a suspension of the requirement,²⁵ but demonstrations of good faith should be linked to an individual carrier's specific E911 deadlines.²⁶ Such an approach would then include carriers that received limited extensions in the FCC's *Waiver Order*, in addition to carriers currently subject to the December 31, 2005 deadline. If the Commission adopts a framework for individual waiver requests, rather than a general suspension, ACSW asks that the guidelines similarly apply to all carriers that are otherwise in compliance with their individual E911 timelines. If Tier I and II carriers, the largest carriers in the country, may not meet the 95% penetration deadline, there is no reason to preclude Tier III carriers from obtaining similar relief simply because they needed a slightly longer timeframe to achieve the 100% location-capable handset activation deadline.

As the Commission has acknowledged, Tier III carriers have fewer resources than larger carriers;²⁷ even among Tier III carriers, not all are "similarly situated" to achieve E911 compliance because of their vastly differing customer demographics and service areas.²⁸

²⁵ See *id.* at 10.

²⁶ The Petition notes that, for the first part of the waiver framework, those carriers "*that have not obtained a waiver of*" the 100% activation rule would be required to show compliance. *Id.* at 11. However, the Petition does not contain similar terms regarding the suspension request.

²⁷ See *id.* at ¶ 19.

²⁸ See *id.*

V. Conclusion.

ACSW strongly supports CTIA/RCA's Petition for a suspension of the 95% benchmark. ACSW also asks that, if the Commission grants the Petition, it apply relief to all carriers that show good faith compliance with the Commission's E911 rules, regardless of individual deadlines for the 95% penetration mark. If the Commission finds that a general suspension is not appropriate, ACSW further agrees with CTIA/RCA that it should provide a framework for individual waiver requests to be granted/considered.

DATED this 21st day of October, 2005.

Alaska Communications Systems, Inc.

By: /s/ Leonard A. Steinberg
Leonard A. Steinberg, General Counsel

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